

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF  
INDUSTRIAL ACCIDENTS**

**BOARD NO. 024670-00**

Joseph Williams  
Berkeley Chandler  
Public Service Mutual Insurance Co.

Employee  
Employer  
Insurer

**REVIEWING BOARD DECISION**

(Judges Costigan, Carroll and Horan)

**APPEARANCES**

Michael C. Akashian, Esq., for the employee  
Paul R. Matthews, Esq., for the insurer

**COSTIGAN, J.** The employee and the insurer cross-appeal from an administrative judge's decision awarding weekly incapacity benefits for an accepted left hip injury. Because the judge's findings on the medical evidence are muddled and lend questionable support for his incapacity determination, we recommit the case for reconsideration of the medical evidence and further subsidiary findings of fact consistent with this opinion.

On June 22, 2000, the employee fell from a ladder at work and sustained a subtrochanteric fracture of his left hip. The insurer accepted the claim and paid total incapacity benefits. After surgery and a year of physical therapy, the employee was able to return to light duty work in August 2001. By October 2001, the employee was unable to perform his light duty assignments due to increasing left hip and left knee pain. (Dec. 4.)

The employee filed a claim for further benefits which the insurer resisted. It denied liability for the employee's left knee condition, and contested the extent and causal relationship of his claimed incapacity. (Dec. 3.) Pursuant to § 11A, the employee underwent an impartial medical examination by Dr. James V. Bono on November 18, 2002. The doctor opined that the employee's hip fracture was fully healed, and that there was neither an objective explanation for his continuing

complaints of left hip pain, nor an objective basis why the employee could not return to work as a construction worker. Based solely on the employee's subjective complaints, however, Dr. Bono opined that Mr. Williams was able to do light duty work with restrictions. The doctor did not causally relate the employee's left knee complaints to his work injury, but rather to underlying patellofemoral arthrosis unrelated to the industrial accident. (Dec. 5; Ex. 1.)

In response to the employee's § 11A motion, the judge declared the impartial medical report inadequate, and the medical issues complex. The judge allowed the parties to submit additional medical evidence. (Dec. 2-3; Exs. 4 and 5.) Based, purportedly, on his adoption of the opinions of Dr. George McManama, the insurer's medical expert, the administrative judge awarded the employee a closed period of § 34 total incapacity benefits, followed by ongoing § 35 partial incapacity benefits. (Dec. 7-12.) The judge found that the employee's left knee complaints were not work-related.<sup>1</sup> (Dec. 11.)

Although the decision contains several confusing and inconsistent findings relative to the expert medical opinions in evidence, two examples suffice to illustrate why we cannot, as the employee proposes, simply substitute one doctor's name for another's on the adopted opinions, and recommit this case to the judge to confirm our substitutions. First, addressing the impartial medical examiner's opinions, the judge wrote:

Dr. Bono, an orthopedic surgeon, offered the diagnosis that the employee suffered a left subtrochanteric fracture *and left patellofemoral crepitus as a result of [the] work-related accident on June 22, 2001* [sic]. (Ex. 1 at pg. 1) . . . Dr. Bono further opined that the employee's left knee complaints, along with the physical finding of marked crepitus, suggested *patellofemoral arthrosis, which he concluded, were unrelated to the June 22, 2001* [sic] *accident*. (Ex. 1 at pg. 1).

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<sup>1</sup> Indeed, there is no competent expert opinion in evidence to the contrary. After discussing the opinions of the employee's three treating physicians, (Dec. 6-7), the judge found that, "Dr. Creevy, Dr. Tornetta and Dr. Einhorn . . . offered no opinion as to the causal relationship between the employee's left knee complaints and the industrial injury." (Dec. 8.)

(Dec. 5; emphasis added.) The judge expressly adopted the § 11A physician's opinion, but only as to the causal relationship of the employee's left hip complaints to the industrial accident. (Dec. 8.) The judge also said he adopted the opinions of Dr. McManama in finding that the employee is partially incapacitated due to his work-related left hip injury: "I adopt the opinion of Dr. McManama in finding the employee's condition and disability to be causally related to the industrial injury. I do not find that the employee's left knee complaints are secondary to the June 22, 2000 industrial injury." (Dec. 11.) Dr. McManama, however, did *not* opine that the employee's partial disability was related to his left hip injury. As the judge duly noted:

Dr. McManama opined that the employee is unable to resume his duties as a construction worker because of the unrelated bilateral patellofemoral arthritis in his knees. (Ex. 5 at pg. 4). Dr. McManama concluded that the employee is capable of modified work that does not involve bending, squatting, kneeling, and climbing activities along with a lifting restriction of thirty pounds. (Ex. 5 at pg. 4).

(Dec. 8.) The judge also found that according to Dr. McManama, as of March 1, 2004,<sup>2</sup> the employee had reached a medical end result with a continuing disability for his construction worker's job caused by unrelated bilateral arthritis in his knees. (Dec. 9.)

Given the judge's mischaracterizations of the medical evidence, recommitment is necessary. LaGrasso v. Olympic Deliv. Serv., Inc., 18 Mass. Workers' Comp. Rep. 48, 58 (2005).

We should be able to look at the judge's subsidiary findings and understand the logic behind his ultimate conclusion. His general findings should emerge clearly from the matrix of the subsidiary findings. Crowell v. New Penn Motor Express, 7 Mass. Workers' Comp. Rep. 3, 4 (1993). Where subsidiary findings are lacking, imprecise or internally consistent, a decision cannot stand. Messinger v. Bethlehem Steel Corp., 13 Mass. Workers' Comp. Rep. 309, 312 (1999).

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<sup>2</sup> Doctor McManama's report is dated March 1, 2004, but he examined the employee on February 10, 2004. (Ex. 5.)

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Tower v. Massachusetts Hwy. Dept., 17 Mass. Workers' Comp. Rep. 368, 371-372 (2003). Here, the record is devoid of any expert medical opinion that causally relates the employee's left knee problems to the accepted industrial injury. See footnote 1, supra. Moreover, the judge adopted the opinions of Drs. McManama, Einhorn and Tornetta, that the employee had recovered from his left hip fracture. (Dec. 10.) As those doctors evaluated the employee on February 10, 2004, November 25, 2002 and March 31, 2003, and on February 26, 2002<sup>3</sup> respectively, we simply cannot discern what medical evidence the judge viewed as supportive of his finding that the employee remained totally incapacitated through March 31, 2003, and partially incapacitated from April 1, 2003 and continuing, and that such incapacity was and remains causally related to his compensable left hip injury.

Accordingly, we recommit this case for reconsideration of the medical evidence and for further subsidiary findings of fact on the issues of the nature, extent and causal relationship of the employee's incapacity from and after October 10, 2001.

So ordered.

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Patricia A. Costigan  
Administrative Law Judge

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Martine Carroll  
Administrative Law Judge

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Mark. D. Horan  
Administrative Law Judge

Filed: **April 25, 2006**

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<sup>3</sup> The employee acknowledges that the judge's finding of a March 31, 2003 evaluation by Dr. Tornetta is error, and that only Dr. Einhorn saw the employee on that date. (Employee br. 6-7.)